

REMARKS:

Claims 1-39 are currently pending. Claims 1, 3-6, 8, 9, 11-19, 21-24, 26-27, and 29-38 have been amended. Support for the amendments may be found at least in the Abstract, Summary (paragraphs 13-15 of the published application), and paragraphs 31-78 and 90 of the published application. The amendments to claims 3, 6, 17, 21, 24 and 35 are not intended to narrow the claim scope, and the remaining claim changes are made to enhance readability, adjust dependencies, or recite preferential language and are not intended to relate to patentability. New claim 39 has been added. Reconsideration is respectfully requested.

35 U.S.C. § 112 Rejections

The Office Action includes a rejection of claims 3, 21, 6, 24, 17 and 35 (where 17 and 35 understood to mean 18 and 36) under 35 U.S.C. § 112 as allegedly being indefinite. These claims have been amended in ways that address the rejections, and withdrawal of the rejections is respectfully requested. With regard to claims 18 and 36, support for the amendments may be found at least at paragraph 90 of the published application, for example.

Art Rejections

The Office Action includes a rejection of claims 1, 5, 8-9, 13-18, and 37-38 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,721,337 (“Kroeger”). The rejection is respectfully traversed.

Independent claim 1 recites an intelligent digital broadcast scheduling system, said scheduling system arbitrating the use of specified broadcast time slots, said broadcast comprising data content including one or more of audio, video, text, graphics, images, or data. The scheduling system comprises an arbitrator, said arbitrator determining relative

levels of data content based upon priority indicators, service categories, and service classes of data content received from a plurality of content providers; a scheduler, said scheduler sequencing said data content for broadcast based on said arbitrator determinations of relative levels of data content; and an in-band on-channel (IBOC) transmitter broadcasting said data content based upon said sequencing. Claims 37 and 38 recite a method and a system respectively, that involve, *inter alia*, determining relative levels of data content based upon priority indicators, service categories, and service classes of said data content, and sequencing said data content for broadcast based on said determining relative levels of data content.

In contrast, Kroeger does not disclose determining relative levels of data content based upon a combination of “priority indicators, service categories, and service classes” of data content received from a plurality of content providers. The examiner cites to col. 4, line 45 – col. 5, line 28 of Kroeger for allegedly disclosing the claimed priority indicators, service categories, and service classes. Applicants observe that Kroeger discloses priority classes for message prioritization, including prioritization based on cost. However, claims 1, 37 and 38 recite that the claimed determination of relative levels of data content is based upon the combination of priority indicators, service categories and service classes, a combination which is not disclosed in Kroeger. Moreover, since Kroeger does not disclose a combination of priority indicators, service categories and service classes, Kroeger cannot disclose determining relative levels of data content based upon priority indicators, service categories and service classes. Accordingly, Kroeger cannot anticipate independent claims 1, 37 and 38 for at least these reasons. Withdrawal of the rejection and allowance of claims 1, 37 and 38 are requested for at least this reason. Claims 5, 8, 9, 13-18 are allowable at least by virtue of dependency.

The Office Action also includes a rejection of claims 2-4, 6, 7, 10-12, and 19-36 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kroeger in view of various secondary references -- U.S. Pub. No. 2002/0044567 ("Voit"), U.S. Pat. No. 5,935,218 ("Beyda"), U.S. Pat. No. 5,615,249 ("Solondz"), and U.S. Pat. No. 6,782,510 ("Gross"). This rejection is respectfully traversed.

Claim 19 recites subject matter similar to that recited in claim 1 along with additional subject matter. The Office alleges that Kroeger discloses all the limitation of claim 19 except for one or more gateways, and alleges that Voit discloses this subject matter. (Office Action at p. 10). However, claim 19 recites that the claimed determination of relative levels of data content is based upon the combination of priority indicators, service categories and service classes, a combination which is not disclosed in Kroeger. Moreover, since Kroeger does not disclose a combination of priority indicators, service categories and service classes, Kroeger cannot disclose determining relative levels of data content based upon priority indicators, service categories and service classes. The Office's reliance upon Voit does not make up for the absence of this subject matter in Kroeger.

Accordingly, withdrawal of the rejection and allowance of claim 19 are respectfully requested for at least these reasons. Claims 2-4, 6, 7, 10-12, and 20-36 depend variously from claims 1 or 19, and are therefore allowable at least by virtue of dependency.

Moreover, it is respectfully submitted that Kroeger is disqualified as prior art under 35 U.S.C. § 103(c) in the obviousness rejections against the above-identified claims. Under 35 U.S.C. § 103(c), for an application to a claimed invention filed on or after November 29, 1999, subject matter that qualifies as prior art under only 35 U.S.C. §§ 102(e), 102(f) or 102(g) is disqualified as prior art in a § 103(a) rejection where that subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same

person or subject to an obligation of assignment to the same person. In this case, the application of the present invention was filed on October 26, 2001, and Kroeger qualifies as prior art under only § 102(e). Further, it is stated that the claimed invention of the present application and the subject matter of Kroeger were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person, namely, iBiquity Digital Corporation, as evidenced at least by recorded instruments in each. An assignment to iBiquity Digital Corporation for the present application was executed on October 4, 2001, and recorded at the U.S. Patent and Trademark Office (USPTO) on October 26, 2001, at reel 012494, frame 0058. A change of name to iBiquity Digital Corporation for the Kroeger subject matter was executed on August 21, 2000, and recorded at the USPTO on March 28, 2001, at reel 011658, frame 0769. Accordingly, withdrawal of the obviousness rejections and allowance of claims 2-4, 6, 7, 10-12, and 19-36 are respectfully requested for at least this additional reason.

New Claim 39

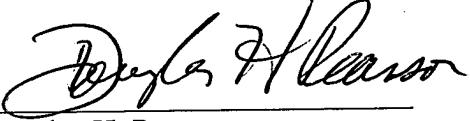
Claim 39 has been added herein and recites a computer readable medium having embodied therein computer instructions adapted for scheduling digital broadcast data content, wherein the instructions being adapted to cause a computer processing system to execute steps like those recited in claim 37. Claim 39 is allowable at least for reasons similar to those set forth above with regard to claims 1, 37 and 38 above.

Conclusion

In light of the remarks above, withdrawal of the rejections and allowance of this application are respectfully requested. Should there be any questions in connection with this application, the Examiner is invited to contact the undersigned at the number below.

Respectfully submitted,

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